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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 WILLIAM SCHMIDT,

11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA, as  
substituted party for CHARLES  
WASHINGTON,

14 Defendant.

CASE NO. C12-1116 MJP

ORDER GRANTING MOTION TO  
DISMISS

15  
16 This matter comes before the Court on Defendant's motion to dismiss. (Dkt. No. 24.)  
17 Having reviewed the motion, Plaintiff's response (Dkt. No. 25), and all related filings, the Court  
18 GRANTS the motion and DISMISSES the action.

19 **Background**

20 Plaintiff William Schmidt, proceeding *pro se*, filed an action in King County's Small  
21 Claims Court against Charles Washington, a revenue officer with the Internal Revenue Service.  
22 Plaintiff asserted claims for "theft and conversion of property." Plaintiff provided no other  
23 factual allegations. Because Washington is a Revenue Officer with the Internal Revenue Service  
24 ("IRS"), the United States removed the action under 28 U.S.C. §§ 2679(d)(2) and 1442(a)(1).

1 (Dkt. No. 1.) It also filed a Notice of Substitution and Certification of Scope of Employment.  
2 (Dkt. No. 2.) Defendant also successfully moved for a more definite statement of Plaintiff's  
3 claims.

4 Plaintiff filed an amended complaint asserting claims under the Federal Tort Claims Act.  
5 (Dkt. No. 21.) The amended complaint alleges numerous legal theories challenging the validity  
6 of the IRS actions. First, Plaintiff claims Mr. Washington had no authority to collect his  
7 outstanding federal income taxes because, among other things, "the IRS is not authorized to do  
8 business in Washington" and Mr. Washington is not an agent for the IRS but "a Revenue Agent  
9 for the Commonwealth of Puerto Rico Department of Treasury." (*Id.* at ¶ 5.) Plaintiff also  
10 claims, as a Washington resident, he is not subject to federal taxes or that federal taxes are  
11 voluntary. (*Id.* at ¶¶ 4, 11-12, 17, 18-23, 28-29, 36, 44-45, 47-48, 53-56, 61-62, 67-70.)  
12 Defendant also asserts the particular tax imposed by the IRS is unlawful because the eighteenth  
13 amendment to the U.S. Constitution repealed it. (*Id.* at ¶17.). For these purported wrongs, he  
14 demands \$100,000 in putative damages, an injunction preventing the IRS from collecting his  
15 outstanding federal liabilities, and the termination of Mr. Washington from his IRS employment.  
16 (*Id.* at 19-20.)

17 Defendant now moves to dismiss the amended complaint arguing this Court lacks subject  
18 matter jurisdiction and Plaintiff has failed to state a claim upon which relief may be granted.  
19 (Dkt. No. 24.)

## 20 Analysis

### 21 A. Legal Standard

22 When considering motion to dismiss for failure to state a claim under Federal Rule of  
23 Civil Procedure 12(b)(6), "the court is to take all well-pleaded factual allegations as true and to  
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draw all reasonable inferences there from in favor of the plaintiff.” Wyer Summit P'ship v. Turner Broad. Sys., Inc., 135 F.3d 658, 663 (9th Cir. 1998). Facts alleged in the complaint are assumed to be true. See Lipton v. Pathogenesis Corp., 284 F.3d 1027, 1030 n. 1 (9th Cir. 2002). A complaint must provide more than a formulaic recitation of the elements of a cause of action and must assert facts that “raise a right to relief above the speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 545 (2007).

### **B. Subject Matter Jurisdiction**

Defendant moves to dismiss, arguing this Court lacks subject matter jurisdiction over the action because the United States has not waived sovereign immunity, which precludes Plaintiff's claims. In his Complaint, Plaintiff asserts that “28 U.S.C. §1346(a)(1) and 26 U.S.C. 7433 confers jurisdiction upon this Court and waives the sovereign immunity of the United States regarding claims for sums wrongfully collected under the internal revenue laws.” (Dkt. No. 21 at 1.)

Dismissal is proper under 12(b)(1) if this Court does not have subject matter jurisdiction over the claims asserted in Plaintiff's complaint. Morrison v. Nat'l Austl. Bank Ltd., — U.S. —, 130 S.Ct. 2869 (2010) (“Subject-matter jurisdiction, by contrast, refers to a tribunal's power to hear a case.”). “[W]hen considering a motion to dismiss pursuant to Rule 12(b)(1) the district court is not restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction.” McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988). Plaintiff has the burden of proving jurisdiction in order to survive Defendant's motion to dismiss. Kingman Reef Atoll Investments, L.L.C. v. United States, 541 F.3d 1189, 1197 (9th Cir. 2008).

1 In an action against the United States, Plaintiff must establish that Congress explicitly  
 2 waived sovereign immunity. Arford v. United States, 934 F.2d 229, 231 (9th Cir. 1991). In  
 3 other words, the United States must consent to be sued in order for this Court to have subject-  
 4 matter jurisdiction. Id.

5 Sovereign immunity bars Plaintiff's claims. Miller v. United States, 66 F.3d 220, 223  
 6 (9th Cir. 1995). Contrary to Plaintiff's contentions, neither 28 U.S.C. §1346(a)(1) nor 26 U.S.C.  
 7 §7433 provides a waiver of sovereign immunity under these circumstances. Flora v. United  
 8 States, 362 U.S. 145, 177 (1960) (construing 28 U.S.C. §1346(a)(1) as requiring full payment of  
 9 an assessment against a taxpayer before a refund suit can be maintained in district court);  
 10 Conforte v. United States, 979 F.2d 1375, 1377 (9th Cir. 1992) (failure to exhaust administrative  
 11 remedies is jurisdictional). Because Plaintiff fails to establish he fully paid the tax assessment or  
 12 that he exhausted administrative remedies, this Court lacks subject-matter jurisdiction over his  
 13 claims.

#### 14 **C. Failure to State a Claim**

15 Even if subject matter jurisdiction exists, dismissal is still warranted because Plaintiff  
 16 fails to state any cognizable legal claim. Plaintiff offers numerous legal theories about the  
 17 authority of the IRS. But none of these claims has an arguable basis in either fact or law. They  
 18 are consequently frivolous. Neitzke v. Williams, 490 U.S. 319, 324 (1989). Plaintiff's belief that  
 19 he should be immune from federal tax law or that the IRS lacks authority to collect taxes is  
 20 completely without legal merit, and federal courts universally reject the types of arguments  
 21 Plaintiff is making here. See In re Becraft, 885 F.2d 547, 548 n. 2 (9th Cir. 1989) ("We hardly  
 22 need comment on the patent absurdity and frivolity of such a proposition."); Wilcox v. Comm'r,  
 23 848 F.2d 1007, 1008 (9th Cir. 1988); Ryan v. Bilby, 764 F.2d 1325, 1328 (9th Cir. 1985) ("Like  
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1 it nor not, the Internal Revenue Code is the law[.]”). Because no legal basis exists for Plaintiff’s  
2 claims, the action is dismissed.

3 Although Mr. Schmidt is *pro se*, he is, nonetheless, required to comply with the  
4 requirements under the Federal Rules of Civil Procedure that claims are supported by existing  
5 law, the factual contentions have evidentiary support, and are not presented for an improper  
6 purpose. Fed. R. Civ. P. 11(b); Warren v. Guelker, 29 F.3d 1386, 1388 (9th Cir. 1994) (Civil  
7 Rule 11 pleading requirements and sanctions apply to *pro se* litigants). Mr. Schmidt is notified  
8 that, pursuant to Rule 11(c), future filings containing frivolous legal arguments or factual  
9 contentions without evidentiary support, like the claims asserted here, may lead to sanctions  
10 which may include payment of a penalty as well as reasonable attorney’s fees and other  
11 expenses.

### 12 Conclusion

13 Despite this Court affording Plaintiff two opportunities to plead his case, he has failed to  
14 establish this Court’s jurisdiction over these claims and failed to state a claim upon which relief  
15 may be granted. The Court therefore, GRANTS Defendant’s motion. (Dkt. No. 24.) Plaintiff’s  
16 claims are DISMISSED with prejudice, because amendment would be futile.

17 The clerk is ordered to provide copies of this order to all counsel.

18 Dated this 30th day of November, 2012.

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21 Marsha J. Pechman  
22 Chief United States District Judge  
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